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IN RE: FACEBOOK, INC. CONSUMER
PRIVACY USER PROFILE LITIGATION,

This document relates to:

ALL ACTIONS

CASE NO. 3:18-MD-02843-VC

**DECLARATION OF MICHAEL DUFFEY
IN SUPPORT OF DEFENDANT
FACEBOOK, INC.'S MOTION TO
DISMISS PLAINTIFFS NAOMI BUTLER
AND PETER CHRISTLEY AND MOTION
TO STRIKE FROM SACC CLAIMS THAT
HAVE BEEN DISMISSED WITH
PREJUDICE**

Judge: Hon. Vince Chhabria
Courtroom 4, 17th Floor
Hearing Date: November 5, 2020
Hearing Time: 10:00 a.m.

I, Michael Duffey, declare as follows:

1. I am an eDiscovery and Litigation Case Manager in the Legal Department of Facebook, Inc. (“Facebook Inc.”), a party in the above-captioned action. I work at Facebook Inc.’s headquarters in Menlo Park, California. I offer this declaration in support of Facebook Inc.’s Motion to Dismiss Plaintiffs Naomi Butler and Peter Christley. I have personal knowledge of the facts set forth in this declaration (unless otherwise noted), and, if called to testify, I could and would competently testify to them.

2. As part of my responsibilities for Facebook Inc., I have access to corporate information about Facebook Inc. and its subsidiaries.

3. Facebook’s platform and services are provided to Facebook users in the United States by Facebook Inc. Facebook Inc. is incorporated in Delaware and has its principal place of business in Menlo Park, California.

4. Facebook’s platform and services are provided to Facebook users in Europe, including in the United Kingdom, by Facebook Ireland Limited (“Facebook Ireland”). Facebook Ireland is a subsidiary of Facebook Inc. Facebook Ireland is organized under the laws of the Republic of Ireland and has its principal place of business in Dublin, Ireland.

5. As part of my job responsibilities, I am familiar with Facebook’s user agreements, which have been referred to at different times as the “Terms of Use,” “Statement of Rights and Responsibilities,” and “Terms of Service.”

6. Attached hereto as **Exhibit 1** is a true and correct copy of the version of the Terms of Service for Facebook Ireland that was in effect in the United Kingdom from May 25, 2018, to July 30, 2019 (the “2018 Terms”). Facebook Ireland progressively rolled out the 2018 Terms to U.K. users from April 18–26, 2018, and the 2018 Terms took effect on May 25, 2018. Facebook Ireland also launched a new Data Policy and Cookies Policy on that same date. During the time that the 2018 Terms were in effect, they governed U.K. Facebook users’ use of the Facebook platform and services, which the Terms refer to as “the Facebook Products.” Attached hereto as **Exhibit 2** is a true and correct copy of the page that defines “the Facebook Products” to include the Facebook platform and services.

7. Attached hereto as **Exhibit 3** is a true and correct copy of the version of the Terms of Service for Facebook Ireland that has been in effect since July 31, 2019 (the “2019 Terms”). The 2019 Terms currently govern U.K. Facebook users’ use of the Facebook Products.

8. As part of the update to its terms and policies in 2018, Facebook Ireland launched a “GDPR user engagement flow”, which introduced the 2018 Terms, the updated Data Policy, and the updated Cookies Policy to users in, among other places, the United Kingdom. As part of this process, Facebook users in the U.K. had to accept the 2018 Terms to continue using Facebook’s platform and services (Facebook did not request or require consent to or acceptance of any document other than the 2018 Terms). To this end, a banner was displayed to Facebook users in the U.K. over their News Feed (viewable on both desktop and mobile versions of the Facebook Service) that prompted them to launch and complete the GDPR user engagement flow and either accept the 2018 Terms by May 24, 2018, or download their information and leave Facebook. Specifically, when the GDPR user engagement flow was launched, users were presented with a description of the Terms, a hyperlink to the Terms’ full content, a button that said “I ACCEPT,” and a statement that “By tapping ‘I Accept,’ you accept the updated Terms. If you don’t want to accept the Terms, see your options.” A user who clicked on the hyperlink to “see your options” was given the option to download their data and delete their account. Starting on May 25, 2018, Facebook users in the U.K. who had not accepted the 2018 Terms could not access Facebook until they completed the user engagement flow by either accepting the 2018 Terms or opting to delete their account.

9. Attached hereto as **Exhibit 4** is a screenshot from the GDPR user engagement flow that shows the screen that was presented to U.K. Facebook users as part of the GDPR user engagement flow prompting them to accept the 2018 Terms. The banner prompting U.K. Facebook users to launch and complete the GDPR user engagement flow was presented to every U.K. Facebook user above their News Feed.

I declare under penalty of perjury under the laws of the United States of America and the State of California that the foregoing is true and correct. Executed at Redwood City, California, on the 25th day of August, 2020.

By: 
Michael Duffey